



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

West Central Regional Office
3019 Peters Creek Road, Roanoke, Virginia 24019
Telephone (540) 562-6700, Fax (540) 562-6725
www.deq.virginia.gov

Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO CINERGY SOLUTIONS OF NARROWS, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Cinergy Solutions of Narrows, LLC, for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Cinergy Solutions of Narrows, LLC" or "CSN" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the structure at 3520 Virginia Avenue located in Narrows, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Title V Permit, which became effective June 30, 2003.
10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. CSN owns and operates a facility in Narrows, Virginia, and is subject to the Virginia Air Pollution Control Laws and Regulations.
2. On April 7, 2004, DEQ staff conducted a 21-minute EPA Method 9 - Visible Emission Evaluation (VEE) on the common stack for Boilers 1, 3, and 5. This VEE provided DEQ staff with three consecutive 6-minute Opacity readings of 27.5%, 36.7%, and 38.8%.

On May 6, 2004, DEQ staff reviewed the First Quarter (January 1 - March 31) 2004 Excess Emission Report for Boiler 7. The report illustrated that the Opacity values of four consecutive 6-minute averages were 57.2%, 81.4%, 58.7%, and 24.2%.

3. On May 12, 2004, DEQ issued a Notice Of Violation to CSN for violations of Virginia Air Pollution Control Law and Regulations. The observations above are cited under the following regulations:

Condition II.A.15, of the June 30, 2003 Title V Permit, states that the visible emissions from each boiler stack (1,2,3,4,5,6, & 7) shall not exceed 20 percent (20%) Opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60 percent (60%) Opacity, as determined by EPA Method 9.

Section 9 VAC 5-50-20 of the State Air Pollution Control Board Regulations, states that at all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions.

4. On June 25, 2004, DEQ staff met with CSN representatives to discuss the aforementioned issues. During this meeting, CSN representatives provided details as to the previous operating procedures for the boilers. These procedures have since been refined and CSN has recently implemented a tracking/inspection program to minimize the occurrence of deviations as cited in the May 12, 2004, Notice of Violation.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders CSN, and CSN agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders CSN, and CSN voluntarily agrees to pay a civil charge of **\$2,100.00** in settlement of the violations cited in this Order.

1. **\$2,100.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include CSN's Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of CSN, for good cause shown by CSN, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to CSN by DEQ on May 12, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations or (2) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. By entering into this Order, CSN neither admits nor denies the factual findings and conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, CSN admits the jurisdictional allegations and agrees not to challenge the factual findings and conclusions of law contained herein.
4. CSN consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. CSN declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by CSN to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CSN shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CSN shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CSN shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and CSN. Notwithstanding the foregoing, CSN agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to CSN. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CSN from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, CSN voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of FEBRUARY, 2007.⁵

Steven A. Dietrich
for Robert G. Burnley, Director
Department of Environmental Quality

Cinergy Solutions of Narrows, LLC voluntarily agrees to the issuance of this Order.

By: Scott A. Abreamson

Date: 2/4/05

Commonwealth of Virginia

City/County of Giles

The foregoing document was signed and acknowledged before me this 4 day of
February, 2007, by Scott A. Abreamson, who is
(name)

Plant Manager of Cinergy Solutions of Narrows, LLC, on behalf of the Corporation.
(title)

Nita Louise Helms
Notary Public

My commission expires: Oct 31, 2007

APPENDIX A

Cinergy Solutions of Narrows, LLC shall:

1. Within **30 days** from the effective date of the Order, submit to the DEQ accurate, up to date documentation demonstrating that all employees associated with the Boiler Systems have been trained in Operation and Maintenance procedures.
2. Within **90 days** from the effective date of the Order, submit to the DEQ accurate documentation demonstrating that a preventative maintenance plan has been implemented/updated to establish good operating practices for the boiler systems.